

[Title 14 Department of Fish and Game]

INITIAL STATEMENT OF REASONS

**Proposed Amendments to Sections 699.5
of Title 14 of the California Code of Regulations**

ADMINISTRATIVE REQUIREMENT

Fish and Game Code section 702 authorizes the Department of Fish and Game ("Department") to administer and enforce the provisions of the Fish and Game Code through regulations adopted by the Department. Fish and Game Code section 1609 authorizes the Department to establish a schedule of fees and mandates that the fees charged pay the total costs the Department incurs to administer and enforce Fish and Game Code sections 1600–1616, including, but not limited to, preparing lake and streambed alteration agreements ("agreements") and conducting inspections. The Department's existing fee schedule is in section 699.5 of title 14 of the California Code of Regulations.

On January 1, 2004, legislation that repealed Fish and Game Code sections 1600–1607 and added Fish and Game Code sections 1600–1616 took effect (S.B. 418, Ch. 736). Some of the changes the legislation made that affect the existing fee schedule are described below.

Former Fish and Game Code section 1601 specified certain activities that a state or local governmental agency or public utility could not begin without first notifying the Department. Former Fish and Game Code section 1603 was similar to former section 1601, except former section 1603 applied only to persons. The existing fee schedule is based on former Fish and Game Code sections 1600–1607. Hence, it distinguishes between "1601 Applications" and "1603 Applications." That distinction no longer applies because the legislation combined the provisions in former Fish and Game Code sections 1601 and 1603 described above into existing Fish and Game Code section 1602.

The legislation authorized the Department to issue agreements for a term longer than five years, if the applicant meets specified requirements, including the submittal of a status report every four years. Former Fish and Game Code sections 1600–1607 did not allow the Department to issue an agreement for a term longer than five years. The Department refers to an agreement with a term of five years or less as a "regular" agreement, and refers to an agreement with a term greater than five years as a "long-term" agreement.

The legislation replaced Fish and Game Code section 1607 with Fish and Game

Code section 1609. Former Fish and Game Code section 1607 imposed a fee limitation of \$2,400 for an agreement. Under Fish and Game Code section 1609, the fee limitation is \$5,000 and applies only to regular agreements. There is no fee limitation for long-term agreements. Except for those differences, former Fish and Game Code section 1607 and Fish and Game Code section 1609 are similar.

Finally, the legislation authorized the Department to suspend or revoke an agreement if the entity is not in compliance with the terms of the agreement or the entity does not submit a timely status report. Former Fish and Game Code sections 1600–1607 did not expressly authorize the Department to suspend or revoke an agreement.

SPECIFIC PURPOSE AND NECESSITY OF PROPOSED AMENDMENTS TO THE REGULATIONS

The complete text of the proposed amendments to section 699.5 of title 14 of the California Code of Regulations is attached as Exhibit A and incorporated herein by reference. The specific purpose and necessity of the proposed amendments to the regulations is discussed below.

The purpose of the proposed amendments to section 699.5 of title 14 of the California Code of Regulations is to restructure the fee schedule by 1) changing the existing fee categories; 2) adding new fee categories and fees; and 3) increasing the fees the Department currently charges applicants for agreements. Restructuring the fee schedule as described will enable the Department to make it current with the legislative changes described above. For example, unlike the existing fee schedule, the proposed fee schedule does not include separate fee categories for “1601 Agreements” and “1603 Agreements”; includes a new fee category for status reports; and includes a new fee category related to suspensions. Making the fee schedule current with the legislation will avoid any confusion among applicants and Department staff when trying to determine the appropriate fee an applicant must pay the Department.

Restructuring the fee schedule will also enable the Department to recover the total costs it incurs to administer and enforce Fish and Game Code sections 1600–1616. If the Department does not increase the fees, it will continue to experience a shortfall in its budget which currently affects the Department’s ability to administer and enforce Fish and Game Code sections 1600–1616, the purpose of which is to protect and conserve the State’s fish and wildlife resources. If, because of the shortfall, the Department had to eliminate positions in its Lake and Streambed Alteration Program, it would be even more difficult for the Department to meet that objective. The budget shortfall also affects other Department programs and activities because staff who work in those programs have been used to support the Lake and Streambed Alteration Program.

The fees in the existing fee schedule are not much higher than the fees the Department has been charging since May 14, 1992, which was the second to last time the Department amended the fee schedule. The last time it amended the fee schedule was on March 24, 2000, and that was for the limited purpose of increasing the fees 16.75 percent to account for inflation. Hence, the fee increases proposed by the Department are necessary and long overdue.

ENVIRONMENTAL ANALYSIS

The Department has determined that its proposed regulatory action will not result in a direct physical change, or a reasonably foreseeable indirect physical change, in the environment, and therefore is not a project subject to the requirements of the California Environmental Quality Act (Pub. Resources Code, § 21000 *et seq.*). As a result, the Department has not, and does not intend to, prepare any environmental documents or complete any environmental analyses before adopting the proposed amendments to section 699.5 of title 14 of the California Code of Regulations.

ALTERNATIVES TO THE PROPOSED AMENDMENTS TO THE REGULATIONS

The alternative of not taking any regulatory action is the only alternative to the Department's proposed amendments that the Department considered. The Department was unable to identify any other alternative to the proposed regulatory action that would effectively accomplish the purpose of the proposed amendments.

The Department rejected the alternative of not amending section 699.5 of title 14 of the California Code of Regulations by restructuring the fee schedule as described above for two reasons. First, by not taking this regulatory action, the fee schedule will not be current with the legislation that added Fish and Game Code sections 1600–1616 (S.B. 418, Ch. 736). As discussed above, this will make it difficult for applicants and Department staff to determine the appropriate fee the applicant must pay the Department. Second, by not taking this regulatory action, the Department will be unable to recover the total costs it has been incurring to administer and enforce Fish and Game Code sections 1600–1616 and the Department will continue to experience a budget shortfall. As mentioned above, that shortfall currently affects not only the Department's ability to administer and enforce Fish and Game Code sections 1600–1616, but also other Department programs and activities. Finally, like former Fish and Game Code section 1607, Fish and Game Code section 1609 mandates that the fees the Department charges pay for the total costs the Department incurs to administer and enforce Fish and Game Code sections 1600–1616. The only way the Department can recover its costs is to increase the fees it charges. Hence, if the Department does not take this regulatory action, it cannot comply with the mandate in Fish and Game Code section 1609.

DUPLICATION OF FEDERAL LAW

The Department's proposed amendments to the regulations do not duplicate existing federal law or regulations.

COSTS

The Department has determined that adoption of the proposed amendments to section 699.5 of title 14 of the California Code of Regulations could result in a negative economic impact on businesses, including small businesses, because of the magnitude of the proposed fee increases.

Applicants will still be responsible for the fees the Department charges pursuant to the fee schedule in section 699.5 of title 14 of the California Code of Regulations. The proposed amendments to section 699.5 of title 14 of the California Code of Regulations would increase the fees for standard agreements to between 33% for projects that cost less than \$5,000 to over 700% for projects that cost over \$500,000. However, the actual fee an applicant must pay will depend not just on the cost of the project, which establishes the base fee, but also the number of activities the project includes. For the purpose of the fee schedule, "activity" is defined to mean any activity that by itself would require the applicant to notify the Department in accordance with subdivision (a) of Section 1602 of the Fish and Game Code, and, if necessary, obtain an agreement before beginning the activity. Such an activity is one that, generally speaking, will substantially alter a river, stream, or lake. The proposed amendments to section 699.5 of title 14 of the California Code of Regulations would impose an additional fee of \$250 for each activity over one that the applicant describes in its notification to the Department. However, because Section 1609 of the Fish and Game Code imposes a fee limitation of \$5,000 for a regular agreement, an applicant would not pay more than \$5,000 for such an agreement regardless of the project cost and number of activities described in the notification.

To illustrate the above, under the proposed amendments to section 699.5 of title 14 of the California Code of Regulations, the Department would charge an applicant a base fee of \$300 if the project cost between \$5,000 and \$10,000 if the project includes only one activity. If the project included more than one activity the Department would charge an additional \$250 for each additional activity. Hence, if the applicant's project included two activities, the Department would charge a total of \$500. Under the existing fee schedule, the Department would charge that same applicant \$154, regardless of the number of activities the project includes. The Department would charge an additional \$250 additional fees would be added in increments of \$250 for each additional activity site.

Overall, the proposed amendments to section 699.5 of title 14 of the California

Code of Regulations would increase the existing fees the Department charges applicants an average of 340%. Although that represents a substantial increase over the fees in the existing fee schedule, the increase is necessary for the Department to fully recover its costs to administer and enforce Fish and Game Code sections 1600–1616, and to comply with the cost recovery mandate in Fish and Game Code section 1609. The Department determined that the above-described increase is necessary based on the Fee Proposal Analysis it prepared. Also, as mentioned above, the Department has not substantially increased the fees it charges applicants for agreements since May 14, 1992.

The cost impact on businesses that will result from restructuring the fee schedule by amending section 699.5 of title 14 of the California Code of Regulations is discussed in greater detail in the addendum to Form Std. 399. The Department's complete Form Std. 399 for the proposed amendments is attached as Exhibit B and incorporated herein by reference.

This Initial Statement of Reasons will be supplemented if necessary to reflect any information received through written comments submitted to the Department.

Dated: April 6, 2004



L. Ryan Broddrick, Director
Department of Fish and Game

EXHIBIT A

TEXT OF PROPOSED AMENDMENTS TO REGULATIONS

AMENDMENTS TO REGULATIONS

SUBDIVISION 3. GENERAL REGULATIONS.

CHAPTER 3. MISCELLANEOUS

§ 699.5. Fees for Lake/ and Streambed Alteration Agreements.

~~(a) 1601 Applications (from Public Agencies) – \$154.00 non-refundable application fee, plus:~~

~~(1) No additional fee for projects costing less than \$25,000.~~

~~(2) \$618.75 additional processing fee for projects costing from \$25,000 to \$500,000.~~

~~(3) \$1,236.50 additional processing fee for projects costing over \$500,000.~~

~~(b) 1601 Routine Maintenance Activities (public agencies) if performed under Memorandum of Understanding with the Department of Fish and Game:~~

~~(1) \$129.50 each for the first 20 maintenance projects.~~

~~(2) \$102.75 each for the second 20 maintenance projects.~~

~~(3) \$78.25 each for maintenance projects in excess of 40.~~

~~(4) Projects under this subsection pertain to those waterways under prior 1601 agreement upon which public agencies propose to perform routine maintenance; to be submitted at least 30 days prior to commencement of work.~~

~~(c) 1603 Applications (private) excluding commercial gravel operations and timber harvest – \$154.00 non-refundable application fee, plus:~~

~~(1) No additional fee for private individuals who do the work themselves or projects costing less than \$25,000.~~

~~(2) \$618.75 additional processing fee for projects costing \$25,000 to \$500,000.~~

~~(3) \$1,236.50 additional processing fee for projects costing over \$500,000.~~

~~(d) 1603 Applications – Commercial Gravel Operations~~

~~(1) \$618.75 fee per application.~~

~~(e) 1603/1606 Applications—Timber Harvest~~

~~(1) \$618.75 fee per application with 1 or 2 stream encroachments.~~

~~(2) \$773.00 fee per application with 3 or 4 stream encroachments.~~

~~(3) \$927.00 fee per application with 5 to 9 stream encroachments.~~

~~(4) \$1,031.00 fee per application with 10 or more stream encroachments.~~

~~(f) One year time extensions for 1601/1603 agreements, excluding gravel operations, if the project has not changed.~~

~~(1) \$127.25 fee per application for renewal of a one year extension.~~

~~(2) For the purpose of this subsection, extensions include those agreements which expire before completion of the project and which have no changes in the work described in the original agreement. If the agreement expires prior to a request for an extension, a new notification will be required and all appropriate fees will be charged.~~

~~(g) Amendments to 1601/1603 existing agreements.~~

~~(1) 50% of the fee of the existing agreement.~~

~~(h) Unusual Project Applications. Public or private projects which are unusually extensive and/or protracted, including but not limited to projects that (1) involve more than one departmental administrative region, or (2) involve more than 15 streams (excluding timber harvest applications), shall be charged fees under the following provisions:~~

~~(1) The project sponsor shall submit the appropriate application fee required in the above fee schedule. Should this application fee be insufficient to defer the department's costs, then the department shall arrange for a billing schedule to recover the department's additional project-related costs.~~

(a) Standard Agreement, excluding Agreements for Gravel, Rock, or Sand Extraction and Agreements for Timber Harvesting.

(1) Fee:

(A) \$250 for each activity over one identified in the notification, plus one of the following base fees:

1. \$250 for projects costing less than \$5,000.

2. \$300 for projects costing from \$5,000 to \$10,000.

3. \$600 for projects costing from \$10,000 to \$25,000.

4. \$1,000 for projects costing from \$25,000 to \$100,000.

5. \$1,500 for projects costing from \$100,000 to \$200,000.

6. \$2,000 for projects costing from \$200,000 to \$350,000.

7. \$3,000 for projects costing from \$350,000 to \$500,000.

8. \$5,000 for projects costing over \$500,000.

(2) A standard agreement may be a regular or long-term agreement.

(3) For the purpose of this subdivision, project cost means the total cost of all of those activities identified in the notification that are subject to subdivision (a) of Section 1602 of the Fish and Game Code.

(b) Agreement for Gravel, Sand, or Rock Extraction.

(1) Fee:

(A) \$1,000 if annual extraction volume identified in the notification is less than 1,000 cubic yards.

(B) \$2,500 if annual extraction volume identified in the notification is 1,000 to 5,000 cubic yards.

(C) \$5,000 if annual extraction volume identified in the notification is over 5,000 cubic yards.

(2) An agreement for gravel, sand, or rock extraction may be a regular or long-term agreement.

(c) Agreement for Timber Harvesting.

(1) Fee:

(A) \$1,500 base fee, plus:

1. \$100 for each activity if the notification identifies 1 to 2 activities.

2. \$150 for each activity if the notification identifies 3 to 4 activities.

3. \$200 for each activity if the notification identifies 5 to 9 activities.

4. \$250 for each activity if the notification identifies 10 or more activities.

(2) An agreement for timber harvesting may be a regular or long-term agreement.

(d) Notwithstanding subdivisions (a), (b), and (c), the total fee charged for a regular agreement shall not exceed \$5,000. The total fee charged for a long-term agreement may exceed \$5,000.

(e) Agreement for Routine Maintenance.

(1) Fee:

(A) \$1,500 base fee, plus:

1. \$250 each for the first 15 maintenance activities per calendar year identified in the notification.

2. \$200 each for the second 15 maintenance activities per calendar year identified in the notification.

3. \$150 each for maintenance activities in excess of 30 per calendar year identified in the notification.

(2) An agreement for routine maintenance may only be a long-term agreement.

(f) Master Agreement.

(1) Fee:

(A) \$5,000 base fee, plus \$250 for each activity identified in the notification.

(2) A master agreement may only be a long-term agreement.

(g) Extensions for Regular and Long-Term Agreements.

(1) Fee:

(A) 50% of the total fee paid for the original agreement or \$250, whichever is

greater.

(2) The fee specified in this section shall be submitted with the request for an extension.

(3) For the purpose of this subdivision and subdivision (i), an extension shall not be viewed as an amendment.

(4) If an entity includes the proper extension fee with the extension request and the agreement is both amended and extended, the Department shall not charge the entity the amendment fee specified in subdivision (i).

(h) Status Report.

(1) Fee:

(A) 50% of the total fee paid for the original agreement.

(2) The fee specified in paragraph (1) shall be submitted with the status report.

(i) Amendments to Regular and Long-Term Agreements.

(1) Fee:

(A) 50% of the total fee paid for the original agreement or \$250, whichever is greater.

(j) Reinstatement of Regular or Long-Term Agreement After Suspension.

(1) Fee:

(A) 50% of the total fee paid for the original agreement, not to exceed \$1,000.

(k) California Environmental Quality Act ("CEQA").

(1) When the Department is required to act as lead agency in administering or enforcing Sections 1600–1616 of the Fish and Game Code, the Department may charge and collect a reasonable fee from the entity to recover its estimated CEQA-related costs in accordance with Section 21089 of the Public Resources Code. The Department may recover its estimated CEQA-related costs by collecting from the entity one or more deposits. The Department shall refund any unused deposit to the entity.

(I) Definitions.

(1) For purposes of this section, the following definitions apply:

(A) "Agreement" means a lake or streambed alteration agreement issued by the Department in accordance with Sections 1600–1616 of the Fish and Game Code.

(B) "Regular agreement" means any agreement with a term of five years or less.

(C) "Long-term agreement" means any agreement with a term of more than five years.

(D) "Standard Agreement" means any agreement that is not an agreement described in subdivisions (b), (c), (e), or (f).

(E) "Activity" means any activity that by itself would be subject to subdivision (a) of Section 1602 of the Fish and Game Code.

(F) "Agreement for Routine Maintenance" means a long-term agreement that: (1) covers multiple routine maintenance activities only that the entity intends to complete separately at different time periods during the term of the agreement; (2) includes measures necessary to protect fish and wildlife resources, one or more of which will apply to any single activity the agreement covers; and (3) may describe a procedure the entity must follow before beginning any single activity the agreement covers.

(G) "Master agreement" means a long-term agreement that: (1) covers multiple activities other than routine maintenance activities only that the entity intends to complete separately at different time periods during the term of the agreement; (2) includes measures necessary to protect fish and wildlife resources, one or more of which will apply to any single activity the agreement covers; and (3) may describe a procedure the entity must follow before beginning any single activity the agreement covers.

(H) "Status Report" means the status report described in paragraph (2) of subdivision (g) of Section 1605 of the Fish and Game Code.

(I) "Extension" means the extension an entity may request pursuant to subdivision (b) of Section 1605 of the Fish and Game Code.

NOTE: Authority cited: Section 4607 1609, Fish and Game Code. Section 21089, Public Resources Code. Reference: Section 4607 1609, Fish and Game Code. Section 21089, Public Resources Code.

EXHIBIT B

FORM STD 399

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME Fish and Game	CONTACT PERSON Nick Villa	TELEPHONE NUMBER 916-445-3777
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Fees for Lake and Streambed Alteration Agreements		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input checked="" type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input checked="" type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance standards |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input checked="" type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.)

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: 1,608 Describe the types of businesses (Include nonprofits): Water suppliers; gravel, rock, and sand mining; timber harvesting; private and commercial developers; and agriculture. See addendum.Enter the number or percentage of total businesses impacted that are small businesses: 1,6083. Enter the number of businesses that will be created: None eliminated: None
Explain: See addendum4. Indicate the geographic extent of impacts: ☒ Statewide ☐ Local or regional (list areas):5. Enter the number of jobs created: None or eliminated: None Describe the types of jobs or occupations impacted:

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☒ No If yes, explain briefly:**B. ESTIMATED COSTS** (Include calculations and assumptions in the rulemaking record.)1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ see addendum

- | | | |
|--|--------------------------|--------|
| a. Initial costs for a small business: \$ | Annual ongoing costs: \$ | Years: |
| b. Initial costs for a typical business: \$ | Annual ongoing costs: \$ | Years: |
| c. Initial costs for an individual: \$ | Annual ongoing costs: \$ | Years: |
| d. Describe other economic costs that may occur: | | |

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

2. If multiple industries are impacted, enter the share of total costs for each industry: See addendum
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* \$ _____
4. Will this regulation directly impact housing costs? ☐ Yes ☒ No If yes, enter the annual dollar cost per housing unit: \$ _____ and the number of units: _____
5. Are there comparable Federal regulations? ☐ Yes ☒ No Explain the need for State regulation given the existence or absence of Federal regulations: See addendum
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. Briefly summarize the benefits that may result from this regulation and who will benefit: See addendum
2. Are the benefits the result of: ☒ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?
Explain: See addendum
3. What are the total statewide benefits from this regulation over its lifetime? \$ Addendum

D. ALTERNATIVES TO THE REGULATION *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: See addendum
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- | | | |
|----------------|---------------------------------|------------------------------|
| Regulation: | Benefit: \$ <u>See addendum</u> | Cost: \$ <u>See addendum</u> |
| Alternative 1: | Benefit: \$ <u>N/A</u> | Cost: \$ <u>N/A</u> |
| Alternative 2: | Benefit: \$ <u>N/A</u> | Cost: \$ <u>N/A</u> |
3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:
See addendum

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☒ No
Explain: See addendum

E. MAJOR REGULATIONS *(Include calculations and assumptions in the rulemaking record.)*
Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☒ No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ _____ Cost-effectiveness ratio: _____

Alternative 1: \$ _____ Cost-effectiveness ratio: _____

Alternative 2: \$ _____ Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in (Item _____, Budget Act of _____) or (Chapter _____, Statutes of _____)

☐ b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____

☐ b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

☐ d. is issued only in response to a specific request from the _____

_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____ authorized by Section
(FEES, REVENUE, ETC.)

_____ of the _____ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

☐ 3. Savings of approximately \$ _____ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*



- ☐ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☒ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☒ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☒ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE		TITLE	
		Director	
AGENCY SECRETARY ¹		DATE	
APPROVAL/CONCURRENCE		4/6/04	
		DATE	
PROGRAM BUDGET MANAGER			
DEPARTMENT OF FINANCE ²			
APPROVAL/CONCURRENCE			

- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

ECONOMIC AND FISCAL IMPACT STATEMENT (FORM STD. 399)

ADDENDUM

A. Economic Impact Statement

Section A, Question 2

In Fiscal Year 2002/03, the Department issued a total of 2,888 Lake or Streambed Alteration Agreements ("agreements") statewide, of which 1,608 were issued to private individuals or businesses. The Department cannot determine how many of those agreements were issued to private individuals and how many were issued to businesses without manually retrieving those agreements from its six regional offices and reviewing each one of them. Even then, it would be difficult to discern whether the applicant was a private individual or business.

This problem derives in part from the fact that former Fish and Game Code sections 1600–1607 distinguished between state and local governmental entities and public utilities (former section 1601) and persons (former section 1603), and the Fish and Game Code defines "persons" to include businesses (Fish & G. Code, § 67). Hence, the holder of a "1603" agreement could be either a person or a business, and the agreement might not identify whether the holder is a person or business.

Based on the above, the Department assumed that all 1,608 of the agreements described above were issued to businesses for the purpose of estimating the economic impact the proposed fee schedule would have on businesses. The Department further assumed that it would issue the same number and type of agreements to businesses under the proposed fee schedule. Using those assumptions, the Department calculated that its proposed amendments to restructure, and increase the fees in the schedule of fees it charges applicants for agreements ("proposed regulatory action") could result in total cost increase of \$2,241,532 to businesses, which represents an average increase of approximately \$1,141 per business. The Department derived those figures as follows:

Step 1:

Table 1 (attached), which the Department's Lake and Streambed Program staff prepared, divides the 1,608 agreements described above into three categories:

"1603 Private" = 1,288

"1603 Gravel" = 60

"1603/1606 Timber Harvest" = 260

Total = 1,608

Each category corresponds to a specific fee listed in Table 1. The fee was calculated

for each “1603” category. The Department then calculated the total fees for all “1603” categories to be \$852,817.

Step 2:

The fee categories for standard agreements in the existing fee schedule do not correspond overall to the fee categories in the proposed fee schedule (e.g., the proposed fee schedule does include separate fee categories for “1601 Agreements” and “1603 Agreements” because the legislation described above (S.B. 418, Ch. 736) combined former Fish and Game Code sections 1601 and 1603 into new section 1602 and the proposed fee schedule includes eight fee categories based on project cost instead of three categories in the existing fee schedule). As a result, the Department used a ratio of 0.5567 to estimate the fees the Department would charge businesses under the new fee schedule. The Department derived the ratio by dividing the number of “1603” agreements for Fiscal Year 2002/03 by the total number of agreements issued for all categories during that same period.

Step 3:

To estimate the economic impact on businesses, the Department multiplied the ratio (0.5567) by the total estimated revenue the Department would receive under the proposed fee schedule if it issued 1,608 agreements to businesses (\$4,828,475) to arrive at an estimated \$2,688,012.

Step 4:

By subtracting the \$852,817 calculated in Step 1 above from \$2,688,012, the Department determined the total cost increase to businesses under the proposed fee schedule would be \$1,835,195.

Step 5:

The Department determined the average cost increase per business would be approximately \$1,141 by dividing the total increase in cost to businesses calculated in Step 4 above (\$1,835,195) by the total number of “1603” agreements the Department issued in Fiscal Year 2002/03 (1,608). However, because the Department assumed that all “1603” agreements were issued to private businesses the actual values should be considerably less.

Any business that intends to complete a project that, generally speaking, will alter a river, stream, or lake and may substantially adversely affect fish or wildlife resources must obtain an agreement from the Department. Only those businesses will be affected by the Department’s proposed regulatory action. Those businesses include, but are not limited to, water suppliers; gravel, rock, and sand mining; timber harvesting; private and commercial developers; and agriculture.

As Table 1 indicates, in Fiscal Year 2002/2003, the Department issued a total of 260 agreements for timber harvesting, which represents 16% of the 1,608 "1603" agreements the Department issued. In that same fiscal year, the Department issued 60 agreements for gravel operations, which represents approximately 4% of the 1,608 "1603" agreements the Department issued. The Department issued the remaining 1,288 "1603" agreements in Fiscal Year 2002/2003 other types of businesses and private individuals.

Section A, Questions 3, 5, and 6

As discussed above, the Department estimates the proposed regulatory action will increase the total cost to a business that requires an agreement by approximately \$1,141, which could represent a significant increase for some businesses. However, the Department does not anticipate that such an increase will result in the creation or elimination of businesses and jobs, or the ability of California businesses to compete with businesses in other states.

Section B, Questions 1 and 2

The Department identified the estimated total statewide costs that businesses and individuals may incur as a result of the proposed regulatory action on an individual agreement basis in Section A, Question 2, above. The Department cannot estimate the total statewide costs that businesses and individuals may incur over the lifetime as a result of the proposed regulatory action because the Department cannot determine the how long the proposed fee schedule will remain in effect and the number of businesses and individuals that will need to obtain an agreement over the lifetime of the proposed fee schedule. Any costs, however, will be one-time costs, rather than ongoing.

Section B, Question 3

The Department's proposed regulatory action does not impose any reporting requirements.

Section B, Question 4

The Department's proposed regulatory action will not directly impact housing costs.

Section B, Question 5

There are no federal regulations comparable to the regulations the Department is proposing to amend. Fish and Game Code section 1609 mandates that the Department recover the total costs it incurs to administer and enforce Fish and Game Code sections 1600–1616. The Department has been unable to meet that mandate with the fees it charges under existing fee schedule. Hence, even if comparable federal regulations exist, there would still be a need for the proposed regulatory action.

Section C, Question 1

The Department will benefit from the proposed regulatory action because it will allow it to recover the total costs it incurs to administer and enforce Fish and Game Code sections 1600–1616, the purpose of which is to protect and conserve the state's fish and wildlife resources. Hence, recovering these costs will enable the Department to better meet that objective. That, in turn, will benefit those individuals who enjoy or use the state's fish and wildlife resources.

Entities that require agreements from the Department might also benefit from the proposed regulatory action because by recovering its total costs, it should be able to more effectively and efficiently prepare and issue agreements.

Section C, Question 2

The benefits described above would result from the proposed regulatory action. The Department must take that action to comply with the cost recovery mandate in Fish and Game Code section 1609.

Section C, Question 3

The Department cannot quantify the fish and wildlife benefits described above statewide or even locally over the lifetime of the proposed regulation because doing so would require the Department to identify the fish and wildlife resources that would be protected and conserved as result of better administration and enforcement of Fish and Game Code sections 1600–1616 by the Department. It would also require the Department to determine the economic worth of those resources. Both of those tasks would be difficult, if not impossible, to complete.

Section D, Question 1

The alternative of not taking any regulatory action is the only alternative the Department considered. The Department was unable to identify any other alternative to the proposed regulatory action that would effectively accomplish the purposes of the regulatory action: to make the existing fee schedule current with legislation that went into effect January 1, 2004, that repealed Fish and Game Code sections 1600–1607 and added Fish and Game Code sections 1600–1616; and to increase the fees it charges applicants for agreements in order to meet the cost recovery mandate in Fish and Game Code section 1609. By not taking this regulatory action, the Department will continue to experience budget shortfall that affects not only the Department's Lake and Streambed Alteration Program, but other Department programs as well, all of which affects the Department's ability to protect and conserve the state's fish and wildlife resources. Further, the Department has concluded that increasing the fees in the fee schedule by an average of 340% will not have a significant adverse impact on

California's businesses, including small businesses, which makes the no action alternative less compelling.

Section D, Question 2

See Section A, Question 2; Section C, Question 3; and Section D, Question 1, above.

Section D, Question 3

See Section A, Questions 2, 3, 5, and 6, and Section C, Question 3, above.

Section D, Question 4

The Department's proposed regulatory action does not mandate the use of specific technologies or equipment and do not prescribe specific actions or procedures.

B. Fiscal Impact Statement

Section A

The Department's proposed fee schedule will increase a local agency's cost of obtaining an agreement by up to 179%. However, the Department anticipates that any fiscal impact on a local agency that results from the Department's proposed fee schedule will not be significant and can be absorbed within the agency's existing budgets and resources.

Section B

Adoption of the Department's proposed fee schedule will increase a state agency's cost of obtaining an agreement by up to 179%. However, the Department anticipates that any fiscal impact on a state agency that results from the Department's proposed fee schedule will not be significant and can be absorbed within the agency's existing budget and resources.

Section C

Adoption of the Department's proposed fee schedule will not result in reductions in or savings of federal funds.

Individuals, businesses, and local and state agencies that require an agreement from the Department will incur the costs identified in this addendum beginning in the fiscal year the Department's proposed fee schedule becomes operative (i.e., Fiscal Year 04/05) and all subsequent fiscal years the proposed fee schedule is in effect.

TABLE 1
LAKE AND STREAMBED ALTERATION PROGRAM
MONTHLY COUNTS

STATEWIDE REPORT
FISCAL YEAR 02/03

AGREEMENT CATEGORY	SOURCE CODE	FEE LEVEL	COUNT
1601 Public Agencies			
1601 less than \$25,000 - add \$0	125700.B8	\$154 only	360
1601 \$25,000-\$500,000 - add \$618.75	125700.B9	\$772.75	322
1601 over \$500,000 - add \$1,236.50	125700.C1	\$1,390.50	244
1601 Routine Maintenance			
1601 1 st 20 maintenance projects	125700.C2	\$129.50	172
1601 2 nd 20 maintenance projects	125700.C3	\$102.75	65
1601 excess 40 maintenance projects	125700.C4	\$78.25	137
1603 Private Applications			
1603 less than \$25,000 - add \$0	125700.C6	\$154 Only	806
1603 \$25,000/\$500,000 - add \$618.75	125700.C7	\$772.75	304
1603 over \$500,000 - add \$1,236.50	125700.C8	\$1,390.50	178
1603 Gravel Operations			
1603 gravel operations	125700.C9	\$618.75	60
1603/1606 Application - Timber Harvest			
1603/1606 1 or 2 encroachments	125700.D5	\$618.75	100
1603/1606 3 or 4 encroachments	125700.D6	\$773.00	46
1603/1606 5 or 9 encroachments	125700.D7	\$927.00	56
1603/1606 10+ encroachments	125700.D8	\$1,031.00	58
Extensions			
1601/1603 extensions	125700.D9	\$127.25	567
Amendments			
1601/1603 amendments	125700.L8	50% full fee	218
Unusual Projects			
Unusual project applications	125700.E1	Actual	78
Civil Penalties			
Civil penalties	125700.L9	50% of penalty	0
CEQA Fees			
CEQA deposit	35100012	\$750.00 & up	15
TOTAL COUNT AND REVENUES			3,766

[Title 14 Department of Fish and Game]

**NOTICE BY THE DEPARTMENT OF FISH AND GAME
TO CONSIDER THE ADOPTION OF
AMENDMENTS TO EXISTING REGULATIONS**

NOTICE IS HEREBY GIVEN that the Department of Fish and Game ("Department") proposes to amend existing regulations pertaining to fees for lake or streambed alteration agreements under Fish and Game Code sections 1600–1616.

PROPOSED REGULATORY ACTION

The Department proposes to amend the following section of title 14, subdivision 3, of the California Code of Regulations:

Chapter 3, section 699.5. Fees for Lake/Streambed Alteration Agreements

PUBLIC HEARING

The Department will conduct one public hearing to receive comments, objections, and recommendations regarding its proposed regulatory action. The hearing will be held:

June 2, 2004
9:00 a.m.
Resources Building
Auditorium, 1st Floor
1416 Ninth Street
Sacramento, California

WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed amendments to the above-listed regulations. Written comments must be received no later than 5:00 p.m. on June 2, 2004, in order for the Department to consider them before adopting the proposed amendments to the above-listed regulations.

Please send or deliver any written comments to:

Joyce Young
Department of Fish and Game
830 S Street
Sacramento, California 95814

INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

A. Summary

Fish and Game Code section 702 authorizes the Department of Fish and Game (“Department”) to administer and enforce the provisions of the Fish and Game Code through regulations adopted by the Department. Fish and Game Code section 1609 authorizes the Department to establish a schedule of fees and mandates that the fees charged pay the total costs the Department incurs to administer and enforce Fish and Game Code sections 1600–1616, including, but not limited to, preparing lake and streambed alteration agreements (“agreements”) and conducting inspections. The Department’s existing fee schedule is in section 699.5 of title 14 of the California Code of Regulations.

On January 1, 2004, legislation that repealed Fish and Game Code sections 1600–1607 and added Fish and Game Code sections 1600–1616 took effect (S.B. 418, Ch. 736). Some of the changes the legislation made that affect the existing fee schedule are described below.

Former Fish and Game Code section 1601 specified certain activities that a state or local governmental agency or public utility could not begin without first notifying the Department. Former Fish and Game Code section 1603 was similar to former section 1601, except former section 1603 applied only to persons. The existing fee schedule is based on former Fish and Game Code sections 1600–1607. Hence, it distinguishes between “1601 Applications” and “1603 Applications.” That distinction no longer applies because the legislation combined the provisions in former Fish and Game Code sections 1601 and 1603 described above into existing Fish and Game Code section 1602.

The legislation authorized the Department to issue agreements for a term longer than five years, if the applicant meets specified requirements, including the submittal of a status report every four years. Former Fish and Game Code sections 1600–1607 did not allow the Department to issue an agreement for a term longer than five years. The Department refers to an agreement with a term of five years or less as a “regular” agreement, and refers to an agreement with a term greater than five years as a “long-term” agreement.

The legislation replaced Fish and Game Code section 1607 with Fish and Game Code section 1609. Former Fish and Game Code section 1607 imposed a fee limitation of \$2,400 for an agreement. Under Fish and Game Code section 1609, the fee limitation is \$5,000 and applies only to regular agreements. There is no fee limitation for long-term agreements. Except for those differences, former Fish and Game Code section 1607 and Fish and Game Code section 1609 are similar.

Finally, the legislation authorized the Department to suspend or revoke an

agreement if the entity is not in compliance with the terms of the agreement or the entity does not submit a timely status report. Former Fish and Game Code sections 1600–1607 did not expressly authorize the Department to suspend or revoke an agreement.

B. Purpose/Effect of Proposed Amendments

The purpose of the proposed amendments to section 699.5 of title 14 of the California Code of Regulations is to restructure the fee schedule by 1) changing the existing fee categories; 2) adding new fee categories and fees; and 3) increasing the fees the Department currently charges applicants for agreements. Restructuring the fee schedule as described will enable the Department to make it current with the legislative changes described above. For example, unlike the existing fee schedule, the proposed fee schedule does not include separate fee categories for “1601 Agreements” and “1603 Agreements”; includes a new fee category for status reports; and includes a new fee category related to suspensions. Making the fee schedule current with the legislation will avoid any confusion among applicants and Department staff when trying to determine the appropriate fee an applicant must pay the Department.

Restructuring the fee schedule will also enable the Department to recover the total costs it incurs to administer and enforce Fish and Game Code sections 1600–1616. If the Department does not increase the fees, it will continue to experience a shortfall in its budget which currently affects the Department’s ability to administer and enforce Fish and Game Code sections 1600–1616, the purpose of which is to protect and conserve the State’s fish and wildlife resources. If, because of the shortfall, the Department had to eliminate positions in its Lake and Streambed Alteration Program, it would be even more difficult for the Department to meet that objective. The budget shortfall also affects other Department programs and activities because staff who work in those programs have been used to support the Lake and Streambed Alteration Program.

The fees in the existing fee schedule are not much higher than the fees the Department has been charging since May 14, 1992, which was the second to last time the Department amended the fee schedule. The last time it amended the fee schedule was on March 24, 2000, and that was for the limited purpose of increasing the fees 16.75 percent to account for inflation. Hence, the fee increases proposed by the Department are necessary and long overdue.

DUPLICATION OF FEDERAL LAW

The Department’s proposed amendments to the regulations do not duplicate existing federal law or regulations.

ENVIRONMENTAL ANALYSIS

The Department has determined that its proposed regulatory action will not result

in a direct physical change, or a reasonably foreseeable indirect physical change, in the environment, and therefore is not a project subject to the requirements of the California Environmental Quality Act (Pub. Resources Code, § 21000 *et seq.*). As a result, the Department has not, and does not intend to, prepare any environmental documents or complete any environmental analyses before adopting the proposed amendments to section 699.5 of title 14 of the California Code of Regulations.

FINANCIAL IMPACTS AND IMPACTS ON BUSINESS

The Department has determined that adoption of the proposed amendments to section 699.5 of title 14 of the California Code of Regulations will result in an economic impact on those businesses that must obtain agreements from the Department, including small businesses, because of the proposed fee increases. The extent of the impact, however, will depend on the business itself and the economic benefit of the project for which an agreement is required.

Applicants will still be responsible for the fees the Department charges pursuant to the fee schedule in section 699.5 of title 14 of the California Code of Regulations. The proposed amendments to section 699.5 of title 14 of the California Code of Regulations would increase the fees for standard agreements to between 33% for projects that cost less than \$5,000 to over 700% for projects that cost over \$500,000. However, the actual fee an applicant must pay will depend not just on the cost of the project, which establishes the base fee, but also the number of activities the project includes. For the purpose of the fee schedule, “activity” is defined to mean any activity that by itself would require the applicant to notify the Department in accordance with subdivision (a) of Section 1602 of the Fish and Game Code, and, if necessary, obtain an agreement before beginning the activity. Such an activity is one that, generally speaking, will substantially alter a river, stream, or lake. The proposed amendments to section 699.5 of title 14 of the California Code of Regulations would impose an additional fee of \$250 for each activity over one that the applicant describes in its notification to the Department. However, because Section 1609 of the Fish and Game Code imposes a fee limitation of \$5,000 for a regular agreement, an applicant would not pay more than \$5,000 for such an agreement regardless of the project cost and number of activities described in the notification.

To illustrate the above, under the proposed amendments to section 699.5 of title 14 of the California Code of Regulations, the Department would charge an applicant a base fee of \$300 if the project cost between \$5,000 and \$10,000 if the project includes only one activity. If the project included more than one activity the Department would charge an additional \$250 for each additional activity. Hence, if the applicant’s project included two activities, the Department would charge a total of \$500. Under the existing fee schedule, the Department would charge that same applicant \$154, regardless of the number of activities the project includes. The Department would charge an additional \$250 additional fees would be added in increments of \$250 for each additional activity site.

Overall, the proposed amendments to section 699.5 of title 14 of the California Code of Regulations would increase the existing fees the Department charges applicants an average of 340%. Although that represents a substantial increase over the fees in the existing fee schedule, the increase is necessary for the Department to fully recover its costs to administer and enforce Fish and Game Code sections 1600–1616, and to comply with the cost recovery mandate in Fish and Game Code section 1609. Also, as mentioned above, the Department has not substantially increased the fees it charges applicants for agreements since May 14, 1992.

Based on the foregoing, the Department has determined that adoption of the proposed amendments to the above-listed regulations will have the following effects:

- (a) Mandates on local agencies and school districts: Adoption of the proposed amendments will not impose any mandates on local agencies or school districts.
- (b) Cost to any local agency or school district for which reimbursement is required: Adoption of the proposed amendments will not result in costs to any local agency or school district that are required to be reimbursed pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code, other nondiscretionary cost or savings on local agencies, or any cost or savings in federal funding to the state.
- (c) Cost or savings to any state agency: Adoption of the proposed amendments will not result in savings to any state agency, but will increase a state agency's cost to obtain a lake or streambed alteration agreement from the Department. However, as discussed above, if the fees in the fee schedule are not adjusted by amending section 699.5 of title 14 of the California Code of Regulations, the Department will not be able to fully recover the cost it incurs to administer and enforce Fish and Game Code sections 1600–1616, and not be able to meet the cost recovery mandate in Fish and Game Code section 1609.
- (d) Significant adverse economic impact on businesses: Adoption of the proposed amendments will have an economic impact on those businesses that must obtain an agreement from the Department. The extent of the economic impact depends on the business itself and the economic benefit of the project for which an agreement is required. In any case, increasing the fees in the fee schedule will not affect the ability of California businesses to compete with businesses in other states.

As stated above, adoption of the proposed amendments will only affect those businesses that will need to obtain lake or streambed alteration agreements from the Department for particular projects in the future. In

Fiscal Year 2002/03, the Department issued a total of 2,888 agreements statewide, of which 1,608 were issued to private individuals or businesses. The Department cannot determine how many of those agreements were issued to private individuals and how many were issued to businesses without manually retrieving those agreements from its six regional offices and reviewing each one of them. Even then, it would be difficult to discern whether the applicant was a private individual or business.

This problem derives in part from the fact that former Fish and Game Code sections 1600–1607 distinguished between state and local governmental entities and public utilities (former section 1601) and persons (former section 1603), and the Fish and Game Code defines “persons” to include businesses (Fish & G. Code, § 67). Hence, the holder of a “1603” agreement could be either a person or a business, and the agreement might not identify whether the holder is a person or business.

Based on the above, the Department assumed that all 1,608 of the agreements described above were issued to businesses for the purpose of estimating the economic impact the proposed amendments would have on businesses. The Department further assumed that it would issue the same number and type of agreements to businesses under the proposed fee schedule. Using those assumptions, the Department calculated that the proposed amendments could result in total cost increase of \$2,241,532 to businesses, which represents an average increase of approximately \$1,141 per business. The Department derived those figures as follows:

Step 1:

Table 1 (attached), which the Department’s Lake and Streambed Program staff prepared, divides the 1,608 agreements described above into three categories:

“1603 Private” = 1,288

“1603 Gravel” = 60

“1603/1606 Timber Harvest” = 260

Total = 1,608

Each category corresponds to a specific fee listed in Table 1. The fee was calculated for each “1603” category. The Department then calculated the total fees for all “1603” categories to be \$852,817.

Step 2:

The fee categories for standard agreements in the existing fee schedule do not correspond overall to the fee categories in the proposed fee schedule (e.g., the proposed fee schedule does include separate fee categories for "1601 Agreements" and "1603 Agreements" because the legislation described above (S.B. 418, Ch. 736) combined former Fish and Game Code sections 1601 and 1603 into new section 1602 and the proposed fee schedule includes eight fee categories based on project cost instead of three categories in the existing fee schedule). As a result, the Department used a ratio of 0.5567 to estimate the fees the Department would charge businesses under the new fee schedule. The Department derived the ratio by dividing the number of "1603" agreements for Fiscal Year 2002/03 by the total number of agreements issued for all categories during that same period.

Step 3:

To estimate the economic impact on businesses, the Department multiplied the ratio (0.5567) by the total estimated revenue the Department would receive under the proposed fee schedule if it issued 1,608 agreements to businesses (\$4,828,475) to arrive at an estimated \$2,688,012.

Step 4:

By subtracting the \$852,817 calculated in Step 1 above from \$2,688,012, the Department determined the total cost increase to businesses under the proposed fee schedule would be \$1,835,195.

Step 5:

The Department determined the average cost increase per business would be approximately \$1,141 by dividing the total increase in cost to businesses calculated in Step 4 above (\$1,835,195) by the total number of "1603" agreements the Department issued in Fiscal Year 2002/03 (1,608). However, because the Department assumed that all "1603" agreements were private businesses the actual values should be considerably less.

- (e) Statement of potential cost impact on private persons and businesses: In order to estimate the potential economic impact on private persons and businesses, the Department assumed that all 1,608 agreements described in the section on "Significant adverse economic impact on businesses" above were issued to private persons and businesses. The Department further assumed that it would issue the same number and

type of agreements to private persons and businesses under the proposed fee schedule. Using those assumptions, the Department calculated that the proposed amendments could result in total cost increase of \$1,835,195 to private persons and businesses, which represents an average increase of approximately \$1,141 per private person or business. That represents a significant increase over the fees the Department charges private persons and businesses under the existing fee schedule to obtain an agreement from the Department.

(e) Adoption of the proposed amendments will not have an adverse impact on:

creation or elimination of jobs within California;

creation of new businesses or the elimination of existing businesses within California; or

expansion of businesses currently doing business within California.

(f) Significant effects on housing costs: Adoption of the proposed amendments will not have any significant effect on housing costs

CONSIDERATION OF ALTERNATIVES

According to Government Code section 11346.5(a)(13), the Department must determine that no alternative it considers would be more effective in carrying out the purpose for which the amendments to section 699.5 of title 14 of the California Code of Regulations are proposed or would be as effective and less burdensome to affected private persons than adoption of the proposed amendments. The Department has made this determination, and the explanation for the Department's determination is contained in the Initial Statement of Reasons for the proposed amendments to the regulations, available from the contact person below.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an Initial Statement of Reasons providing an explanation of the purpose, background, and justification for the adoption of the proposed amendments to the regulations and the Department's Form Std. 399. The statement and any documents upon which the Department's proposed amendments are based are available upon request from the Department's contact person, Joyce Young, at (916) 445-2187. A copy of the express terms of the proposed amendments to the regulations, as well as any other information in the Department's rulemaking file, is also available from the Department's contact person and the Department's website at

www.dfg.ca.gov. A copy of the Department's final statement of reasons once it has been prepared will also be available from the Department's contact person and the Department's website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The text of any modified amendment to the regulations will be available to the public at least fifteen (15) days prior to the date on which the Department considers the proposed amendments to the regulations for adoption unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. (Gov. Code, § 11346.8(c).)

AUTHORITY

The authority for the Department to adopt these amendments to the regulations is provided in Fish and Game Code section 702.

Reference: Sections 702 and 1609, Fish and Game Code.

Dated: April 6, 2004

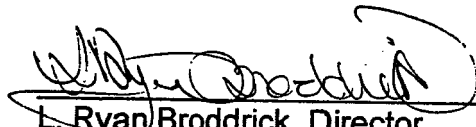

L. Ryan Broddrick, Director
Department of Fish and Game

TABLE 1
LAKE AND STREAMBED ALTERATION PROGRAM
MONTHLY COUNTS

STATEWIDE REPORT
FISCAL YEAR 02/03

AGREEMENT CATEGORY	SOURCE CODE	FEE LEVEL	COUNT
1601 Public Agencies			
1601 less than \$25,000 - add \$0	125700.B8	\$154 only	360
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1601 1 st 20 maintenance projects	125700.C2	\$129.50	172
1601 2 nd 20 maintenance projects	125700.C3	\$102.75	65
1601 excess 40 maintenance projects	125700.C4	\$78.25	137
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1603 less than \$25,000 - add \$0	125700.C6	\$154 Only	806
1603 \$25,000/\$500,000 - add \$618.75	125700.C7	\$772.75	304
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1603 gravel operations	125700.C9	\$618.75	60
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Civil Penalties			
Civil penalties	125700.L9	50% of penalty	0
CEQA Fees			
CEQA deposit	35100012	\$750.00 & up	15
TOTAL COUNT AND REVENUES			3,766

AMENDMENTS TO REGULATIONS

SUBDIVISION 3. GENERAL REGULATIONS.

CHAPTER 3. MISCELLANEOUS

§ 699.5. Fees for Lake/ and Streambed Alteration Agreements.

~~(a) 1601 Applications (from Public Agencies) — \$154.00 non-refundable application fee, plus:~~

~~(1) No additional fee for projects costing less than \$25,000.~~

~~(2) \$618.75 additional processing fee for projects costing from \$25,000 to \$500,000.~~

~~(3) \$1,236.50 additional processing fee for projects costing over \$500,000.~~

~~(b) 1601 Routine Maintenance Activities (public agencies) if performed under Memorandum of Understanding with the Department of Fish and Game:~~

~~(1) \$129.50 each for the first 20 maintenance projects.~~

~~(2) \$102.75 each for the second 20 maintenance projects.~~

~~(3) \$78.25 each for maintenance projects in excess of 40.~~

~~(4) Projects under this subsection pertain to those waterways under prior 1601 agreement upon which public agencies propose to perform routine maintenance; to be submitted at least 30 days prior to commencement of work.~~

~~(c) 1603 Applications (private) excluding commercial gravel operations and timber harvest — \$154.00 non-refundable application fee, plus:~~

~~(1) No additional fee for private individuals who do the work themselves or projects costing less than \$25,000.~~

~~(2) \$618.75 additional processing fee for projects costing \$25,000 to \$500,000.~~

~~(3) \$1,236.50 additional processing fee for projects costing over \$500,000.~~

~~(d) 1603 Applications — Commercial Gravel Operations~~

~~(1) \$618.75 fee per application.~~

~~(e) 1603/1606 Applications — Timber Harvest~~

~~(1) \$618.75 fee per application with 1 or 2 stream encroachments.~~

~~(2) \$773.00 fee per application with 3 or 4 stream encroachments.~~

~~(3) \$927.00 fee per application with 5 to 9 stream encroachments.~~

~~(4) \$1,031.00 fee per application with 10 or more stream encroachments.~~

~~(f) One year time extensions for 1601/1603 agreements, excluding gravel operations, if the project has not changed.~~

~~(1) \$127.25 fee per application for renewal of a one year extension.~~

~~(2) For the purpose of this subsection, extensions include those agreements which expire before completion of the project and which have no changes in the work described in the original agreement. If the agreement expires prior to a request for an extension, a new notification will be required and all appropriate fees will be charged.~~

~~(g) Amendments to 1601/1603 existing agreements.~~

~~(1) 50% of the fee of the existing agreement.~~

~~(h) Unusual Project Applications. Public or private projects which are unusually extensive and/or protracted, including but not limited to projects that (1) involve more than one departmental administrative region, or (2) involve more than 15 streams (excluding timber harvest applications), shall be charged fees under the following provisions:~~

~~(1) The project sponsor shall submit the appropriate application fee required in the above fee schedule. Should this application fee be insufficient to defer the department's costs, then the department shall arrange for a billing schedule to recover the department's additional project-related costs.~~

(a) Standard Agreement, excluding Agreements for Gravel, Rock, or Sand Extraction and Agreements for Timber Harvesting.

(1) Fee:

(A) \$250 for each activity over one identified in the notification, plus one of the following base fees:

1. \$250 for projects costing less than \$5,000.

2. \$300 for projects costing from \$5,000 to \$10,000.

3. \$600 for projects costing from \$10,000 to \$25,000.

4. \$1,000 for projects costing from \$25,000 to \$100,000.

5. \$1,500 for projects costing from \$100,000 to \$200,000.

6. \$2,000 for projects costing from \$200,000 to \$350,000.

7. \$3,000 for projects costing from \$350,000 to \$500,000.

8. \$5,000 for projects costing over \$500,000.

(2) A standard agreement may be a regular or long-term agreement.

(3) For the purpose of this subdivision, project cost means the total cost of all of those activities identified in the notification that are subject to subdivision (a) of Section 1602 of the Fish and Game Code.

(b) Agreement for Gravel, Sand, or Rock Extraction.

(1) Fee:

(A) \$1,000 if annual extraction volume identified in the notification is less than 1,000 cubic yards.

(B) \$2,500 if annual extraction volume identified in the notification is 1,000 to 5,000 cubic yards.

(C) \$5,000 if annual extraction volume identified in the notification is over 5,000 cubic yards.

(2) An agreement for gravel, sand, or rock extraction may be a regular or long-term agreement.

(c) Agreement for Timber Harvesting.

(1) Fee:

(A) \$1,500 base fee, plus:

1. \$100 for each activity if the notification identifies 1 to 2 activities.

2. \$150 for each activity if the notification identifies 3 to 4 activities.

3. \$200 for each activity if the notification identifies 5 to 9 activities.

4. \$250 for each activity if the notification identifies 10 or more activities.

(2) An agreement for timber harvesting may be a regular or long-term agreement.

(d) Notwithstanding subdivisions (a), (b), and (c), the total fee charged for a regular agreement shall not exceed \$5,000. The total fee charged for a long-term agreement may exceed \$5,000.

(e) Agreement for Routine Maintenance.

(1) Fee:

(A) \$1,500 base fee, plus:

1. \$250 each for the first 15 maintenance activities per calendar year identified in the notification.

2. \$200 each for the second 15 maintenance activities per calendar year identified in the notification.

3. \$150 each for maintenance activities in excess of 30 per calendar year identified in the notification.

(2) An agreement for routine maintenance may only be a long-term agreement.

(f) Master Agreement.

(1) Fee:

(A) \$5,000 base fee, plus \$250 for each activity identified in the notification.

(2) A master agreement may only be a long-term agreement.

(g) Extensions for Regular and Long-Term Agreements.

(1) Fee:

(A) 50% of the total fee paid for the original agreement or \$250, whichever is

greater.

(2) The fee specified in this section shall be submitted with the request for an extension.

(3) For the purpose of this subdivision and subdivision (i), an extension shall not be viewed as an amendment.

(4) If an entity includes the proper extension fee with the extension request and the agreement is both amended and extended, the Department shall not charge the entity the amendment fee specified in subdivision (i).

(h) Status Report.

(1) Fee:

(A) 50% of the total fee paid for the original agreement.

(2) The fee specified in paragraph (1) shall be submitted with the status report.

(i) Amendments to Regular and Long-Term Agreements.

(1) Fee:

(A) 50% of the total fee paid for the original agreement or \$250, whichever is greater.

(j) Reinstatement of Regular or Long-Term Agreement After Suspension.

(1) Fee:

(A) 50% of the total fee paid for the original agreement, not to exceed \$1,000.

(k) California Environmental Quality Act ("CEQA").

(1) When the Department is required to act as lead agency in administering or enforcing Sections 1600–1616 of the Fish and Game Code, the Department may charge and collect a reasonable fee from the entity to recover its estimated CEQA-related costs in accordance with Section 21089 of the Public Resources Code. The Department may recover its estimated CEQA-related costs by collecting from the entity one or more deposits. The Department shall refund any unused deposit to the entity.

(I) Definitions.

(1) For purposes of this section, the following definitions apply:

(A) "Agreement" means a lake or streambed alteration agreement issued by the Department in accordance with Sections 1600–1616 of the Fish and Game Code.

(B) "Regular agreement" means any agreement with a term of five years or less.

(C) "Long-term agreement" means any agreement with a term of more than five years.

(D) "Standard Agreement" means any agreement that is not an agreement described in subdivisions (b), (c), (e), or (f).

(E) "Activity" means any activity that by itself would be subject to subdivision (a) of Section 1602 of the Fish and Game Code.

(F) "Agreement for Routine Maintenance" means a long-term agreement that: (1) covers multiple routine maintenance activities only that the entity intends to complete separately at different time periods during the term of the agreement; (2) includes measures necessary to protect fish and wildlife resources, one or more of which will apply to any single activity the agreement covers; and (3) may describe a procedure the entity must follow before beginning any single activity the agreement covers.

(G) "Master agreement" means a long-term agreement that: (1) covers multiple activities other than routine maintenance activities only that the entity intends to complete separately at different time periods during the term of the agreement; (2) includes measures necessary to protect fish and wildlife resources, one or more of which will apply to any single activity the agreement covers; and (3) may describe a procedure the entity must follow before beginning any single activity the agreement covers.

(H) "Status Report" means the status report described in paragraph (2) of subdivision (g) of Section 1605 of the Fish and Game Code.

(I) "Extension" means the extension an entity may request pursuant to subdivision (b) of Section 1605 of the Fish and Game Code.

NOTE: Authority cited: Section ~~4607~~ 1609, Fish and Game Code. Section 21089, Public Resources Code. Reference: Section ~~4607~~ 1609, Fish and Game Code. Section 21089, Public Resources Code.